

STATEMENT OF THE
NATIONAL BORDER PATROL COUNCIL
OF THE
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
AFL-CIO

BEFORE THE
SUBCOMMITTEE ON INTERNATIONAL ORGANIZATIONS,
HUMAN RIGHTS, AND OVERSIGHT
COMMITTEE ON FOREIGN AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

POTENTIAL MEXICAN GOVERNMENT INFLUENCE
ON THE CASE OF RAMOS AND COMPEAN

PRESENTED BY
T.J. BONNER
NATIONAL PRESIDENT

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On behalf of the 12,000 front-line Border Patrol employees that it represents, the National Border Patrol Council appreciates this opportunity to share its views and concerns regarding the potential influence of the government of Mexico on the prosecution of Border Patrol Agents Ignacio “Nacho” Ramos and José Alonso Compean. Because our own Government steadfastly refuses to disclose any information or documents related to this matter, it is difficult to know with any degree of certainty whether its decision to prosecute these agents was influenced by a foreign government. This refusal certainly causes reasonable people to view our Government’s actions in this case with suspicion, especially since a careful review of the relevant facts leads to the inescapable conclusion that these two Border Patrol agents are innocent and do not belong in prison. In order to rectify this terrible injustice and ensure that other law enforcement officers do not suffer a similar fate, it is important to understand the underlying causes.

The incident that gave rise to the prosecution of Border Patrol Agents Ramos and Compean was not particularly unusual. Every day, some of our Nation’s law enforcement officers encounter dangerous situations that require them to make split-second decisions that have far-reaching implications. The courts have upheld the right of law enforcement officers to defend themselves against assaults with a level of force that corresponds to the threat, including deadly force where appropriate. Moreover, the U.S. Supreme Court has set forth the following standard for evaluating the actions of officers in these situations:

The “reasonableness” of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. . . . The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.¹

¹ Graham v. Connor, 490 U.S. 386, 396-397 (1989).

The failure of the U.S. Attorney's Office for the Western District of Texas to utilize this standard in assessing the February 17, 2005 actions of Border Patrol Agents Ramos and Compean is but one of many troubling aspects of the prosecution of those two agents. Some of the others include:

- The fact that the U.S. Attorney's Office based the prosecution of these two agents exclusively on the word of a lieutenant in one of the Mexican drug cartels. The sworn testimony of the other eyewitnesses, as well as the physical evidence and the laws of physics, was completely disregarded.
- The U.S. Attorney's Office threatened to prosecute three other Border Patrol agents who were near the scene of the incident if they did not testify against Agents Ramos and Compean, and then improperly dictated the scope and content of their testimony.
- The prosecution's successful efforts to keep the jury from hearing testimony about the Government's seizure of another 753 pounds of marijuana smuggled by Osvaldo Aldrete-Davila, the key witness against Agents Ramos and Compean. It was also able to suppress evidence about the dangerous nature of the border.
- The full transactional immunity that the Government granted to the drug smuggler in order to secure his testimony against Agents Ramos and Compean.
- The fact that our Government issued at least six parole visas to a known drug smuggler, enabling him to legally enter the United States for almost an entire year, and undoubtedly facilitating further criminal activities.
- The strong likelihood that the government of Mexico demanded that these two agents be punished, as it did in the case of Edwards County Deputy Sheriff Guillermo "Gilmer" Hernandez.
- The possibility that the government of Mexico interviewed the drug smuggler before he spoke with U.S. law enforcement authorities, as it did in another border shooting case. (The Border Patrol agent who shot and killed an illegal alien was subsequently indicted based in part upon the statements of those witnesses.)

Although some of the relevant facts regarding the shooting that occurred on the afternoon of February 17, 2005 in Fabens, Texas are in dispute, it is clear that there were only three eyewitnesses to that event: Border Patrol Agents Ignacio Ramos and José Compean, and Osvaldo Aldrete-Davila, a Mexican national who was transporting 743 pounds of marijuana into the United States.

The testimony of the three other Border Patrol agents who were nearby at the time of the shooting is useless for two reasons. First, they could not possibly have seen whether or not the drug smuggler pointed a weapon at Agents Ramos and Compean, because their view of the shooting scene was completely obstructed by a levee access road which is eleven feet higher than the ground on which they stood. Thus, Agent Oscar Juarez' testimony that he saw the shooting take place is utterly false. Second, their cooperation was coerced under threat of prosecution, and the U.S. Attorney's Office bullied them into providing false and misleading testimony during the trial.

There is no credible evidence that Osvaldo Aldrete-Davila was unarmed on February 17, 2005 while smuggling more than a million dollars worth of marijuana into the United States. It is well-known that most criminals who are transporting large quantities of drugs carry weapons, not necessarily to assault law enforcement officers, but certainly to protect their illicit cargo from being hijacked by other criminals. Agents Ramos and Compean testified under oath that the drug smuggler turned and pointed a weapon at them as he neared the Rio Grande river. Of course, Osvaldo Aldrete-Davila denies that, but the credibility of an individual who had been involved in trafficking narcotics for the previous twelve years and occupied a position of high trust in the notorious Juarez cartel is extremely suspect, to say the least. Since he absconded into Mexico, it is impossible to know with absolute certainty whether or not he was armed. Several important clues can be gleaned from the few pieces of physical evidence that were examined, however. The bullet that struck him did not exit his body, and the largest fragment lodged in his right thigh near the skin and was subsequently recovered. Additionally, the wound channel became infected and was still quite visible when he was attended to by a doctor on

March 16, 2005, about a month after he was shot.

The March 18, 2005 affidavit of the Department of Homeland Security's Office of Inspector General in support of the criminal complaint against Agents Ramos and Compean stated that "[o]n or about March 16, 2005, Colonel Winston J. Warne, MD, Orthopedics, William Beaumont Army Medical Center removed a 40 caliber Smith & Wesson jacketed hollow point projectile from the upper thigh of the victim. Colonel Warne, MD, advised that the bullet entered the lower left buttocks of the victim and passed through his pelvic triangle and lodged in his right thigh." At the trial, when Colonel Warne was asked if the "bullet was fired directly into the back of the person who was shot, or was it fired at an angle through his body," he responded that Aldrete-Davila's "body was on angle to the bullet," and that "the bullet went in on an angle." He also stated that "if [the person who was shot] were turning, as [the prosecutor] demonstrated, [the shooter] would have to be right behind the person." In other words, at the moment that the bullet struck him, Osvaldo Aldrete-Davila was running straight away from the Border Patrol agents, with his torso twisted back toward them.

In a sworn statement provided on March 19, 2005, long before he was aware of the aforementioned evidence and report, Border Patrol Agent José Compean stated that after wrestling on the ground with Osvaldo Aldrete-Davila in an attempt to arrest him, Aldrete-Davila "got up and started running back south towards Mexico. When he was running south he was pointing something shiny with his left hand. It looked like a gun. This is when I started shooting." At the trial, both Agents Compean and Ramos reiterated the fact that the drug smuggler turned and pointed a weapon with his left hand while he was running away. This is completely consistent with the medical evidence. The lower torso of an individual who is running away and pointing his left arm straight back would twist about 90 degrees, placing it in perfect alignment for a bullet to enter the lower left buttock, transit through the pelvic triangle and enter the right thigh.

Law enforcement officers do not have to wait until they are shot at before using deadly force to stop an assailant. The Department of Justice has issued broad guidance for all law enforcement agencies concerning the use of deadly force by their officers: “Law enforcement officers are authorized to use deadly force only when it is reasonable and necessary to protect the officer or others from an imminent danger of death or serious physical injury to the officer or another person.”² The U.S. Border Patrol’s Firearms Policy complies with that guidance: “Firearms may be discharged under the following circumstances: (1) When the officer reasonably believes that the person at whom the firearm is to be discharged possesses the means, the intent, and the opportunity of causing death or grievous bodily harm upon the officer or another person; . . .”³ The actions of Border Patrol Agents Compean and Ramos on the afternoon of February 17, 2005 were in complete accord with the foregoing principle and policy, and fully justified. It is not a crime by any stretch of the imagination for law enforcement officers to defend themselves against an armed aggressor.

In support of his contention that Osvaldo Aldrete-Davila was unarmed, U.S. Attorney Johnny Sutton points to the fact that all of the Border Patrol agents at the scene of the incident, including Agents Ramos and Compean, testified that they did not see the drug smuggler brandish a weapon as he slid into or climbed out of the drainage ditch. This does not prove that he was unarmed. It does, however, explain why none of the agents shot at him at that time. Osvaldo Aldrete-Davila did not produce a weapon until after he was alone with Agent Compean on the other side of the levee road, out of view of the agents who remained north of the drainage ditch, and when he believed that the odds of prevailing in a gunfight were more in his favor.

² U.S. Department of Justice, Principles for Promoting Police Integrity, January 2001, Section II.2., page 3.

³ I&NS Firearms Policy, Section 7(B)(1), [page 17], February 19, 2003. (This policy is still in effect for all Border Patrol personnel.)

It is also important to dispel the ridiculous notion put forth by U.S. Attorney Johnny Sutton that the drug smuggler tried to surrender, and that if Agent Compean had simply placed handcuffs on him, the incident would have ended peacefully. A careful analysis of the facts reveals that nothing could be farther from the truth. Osvaldo Aldrete-Davila could have pulled his van over to the side of the road and given up at any point after the Border Patrol vehicles following him activated their emergency lights, but he chose to ignore them and speed away. He could have obeyed the agents' commands to stop after he exited his vehicle north of the drainage ditch, but he chose to keep running. He could have stopped at the bottom of the drainage ditch, but chose to charge up the other side at full speed toward Agent Compean. None of these actions are consistent with those of someone who is desirous of surrendering. Agent Compean had every reason to believe that Osvaldo Aldrete-Davila was attempting to assault him, and acted appropriately when he tried to push him back down into the drainage ditch.

The alleged destruction of evidence consisted of Agent Compean picking up some of the empty cartridges and tossing them into the drainage ditch a few yards from where they were fired. If he were truly intent on "destroying evidence," he would have taken the shell casings as far away as possible and disposed of them. Rather than a sinister effort to conceal something, it is far more likely that in a state of confusion induced by post-traumatic stress disorder, he reverted to his firearms training, which requires agents to pick up their empty cartridges at the shooting range and place them in nearby containers after firing their weapons.

According to U.S. Attorney Johnny Sutton, the failure by Agents Ramos and Compean to report the discharge of their weapons was a "cover-up," as Border Patrol policy requires agents to orally report such actions within one hour of the incident. If the shooting were justified, he reasons, the agents would not have hesitated to make the required report. Again, the truth is far less dramatic. Both agents believed that everyone at the scene knew that shots had been fired. Given the fact that they had just seized a van filled with the cartel's marijuana, it is quite likely that all of the agents were acutely aware

of the dangers posed by following protocol and securing the scene of the shooting, which would have left them exposed to being shot at by the drug smuggler and his associates from the south side of the border. The April 12, 2005 Memorandum of Activity prepared by the Office of Inspector General of the Department of Homeland Security states that its investigation disclosed that all nine of the other Border Patrol agents “were at the location of the shooting incident, assisted in destroying evidence of the shooting, and/or knew/heard about the shooting.” Significantly, none of these other employees were ever charged with any crimes for their actions or omissions on that day, and only three of them were accused of administrative violations, and that was not until late January of this year. The primary charges in those administrative actions revolved around their alleged false statements to investigators and lack of candor during the investigation. Interestingly, the failure to report the discharge of a firearm is an administrative infraction that, by the agency’s own rules, is punishable by a “written reprimand to 5-day suspension.”⁴ It is also noteworthy that the highest-ranking supervisor at the scene of the incident not only escaped any form of punishment, but has since received two promotions.

Finally, the allegation that Agents Ramos and Compean filed false official reports is based upon the mistaken belief that they should have mentioned the discharge of their weapons in the report concerning the seizure of marijuana. The Border Patrol’s Firearms Policy specifically precludes that, however, requiring that all “supervisory personnel or INS investigating officers are aware that employees involved in a shooting incident shall not be required or allowed to submit a written statement of the circumstances surrounding the incident. All written statements regarding the incident shall be prepared by the local INS investigating officers and shall be based upon an interview of the INS employee.”⁵ The rationale for this prohibition is explained in one of the preceding subsections, requiring that all “supervisory or investigative officers involved in the local INS investigation of the

⁴ U.S. Customs and Border Protection Table of Offenses and Penalties, Section G.1. (June 21, 2004).

⁵ I&NS Firearms Policy, Section 12(B)(1)(g), [page 28], February 19, 2003. [Emphasis in original]

shooting incident are aware that any information provided by any employee under threat of disciplinary action by the Service or through any other means of coercion cannot be used against such employee in any type of action other than administrative action(s) taken by the Service consistent with *Garrity v. New Jersey*, 385 U.S. 493 (1966).”⁶

It bears emphasizing that in order to prosecute these two Border Patrol agents, the U.S. Attorney’s Office granted a high-ranking member of the notorious Juarez cartel full transactional immunity against prosecution for transporting large quantities of illicit narcotics in exchange for his perjured testimony. This is unprecedented, and sends a terrible message to other law enforcement officers, as well as to law-abiding citizens.

The Government also paroled this drug smuggler into the United States for a total of more than nine months, allowing him to come and go freely without supervision. The conditions for this type of visa are set forth in section 212 of the Immigration and Nationality Act:

The Attorney General may, except as provided in subparagraph (B) or in section 1184(f) of this title, in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.⁷

The six visas were issued as follows:

⁶ I&NS Firearms Policy, Section 12(B)(1)(e), [page 28], February 19, 2003.

⁷ 8 U.S.C. § 1182(d)(5)(A).

- March 16, 2005 to April 15, 2005 for “public interest” reasons.
- May 6, 2005 for “public interest” reasons.
- June 1, 2005 to September 1, 2005 for “humanitarian/medical” reasons.
- September 14, 2005 to November 14, 2005 for “public interest” reasons.
- October 27, 2005 to December 15, 2005 for “public benefit” reasons.
- January 24, 2006 to March 31, 2006 for “public benefit” reasons.

The only visas that overlap are the fourth and fifth ones, and the timing of the reissuance is extremely suspicious, as it closely followed the October 23, 2005 seizure of 753 pounds of marijuana tied to Osvaldo Aldrete-Davila. The Border Patrol and the Drug Enforcement Administration found those drugs in a van parked in the back of a residence near the same area of the border where the February 17, 2005 shooting occurred. The house’s primary occupant identified Osvaldo Aldrete-Davila by name and physical description, and also picked him out of a photo lineup. Moreover, his brother in Mexico identified Osvaldo Aldrete-Davila over the phone as “the person who was shot by Border Patrol agents about six months ago.” The cancellation of a parole visa in the wake of evidence of serious criminal activity is perfectly understandable. Its immediate reinstatement is both puzzling and troubling.

Even more disturbing is the fact that the U.S. Attorney’s Office for the Western District of Texas was made aware of this situation immediately, but nonetheless pressed forward with the prosecution of Agents Ramos and Compean, and vigorously argued that such evidence should not be allowed to be presented to the jury in the trial against them. Amazingly, the Judge agreed to conceal that vital information. She also agreed with the U.S. Attorney’s Office that the level of violence along the border between the United States and Mexico had no bearing on the state of mind of Agents Ramos and Compean on the day of the incident, and the jury was not allowed to hear evidence concerning that issue either. (On average, a Border Patrol agent is assaulted every ten hours.) Similarly, testimony

raising serious questions about the integrity of René Sanchez, the Border Patrol agent assigned to the Willcox, Arizona Border Patrol Station who initially reported the shooting to the Office of Inspector General, was not allowed in open court, and remains sealed. This individual, who has been a close friend of Osvaldo Aldrete-Davila since childhood, remains employed as a Border Patrol agent, and has never been disciplined for “[k]nowingly and inappropriately associating with sources of information, illegal aliens, or persons connected with criminal activities ([o]n or off-duty. Includes any social, sexual, financial (including acceptance of gifts), or business relationship).” Under the Bureau’s guidelines, the penalty for this misconduct is a “14-day suspension to removal [from employment].”⁸ Moreover, no investigation has ever been undertaken to reconcile the glaring inconsistencies between his sworn trial testimony and that of his associate, drug smuggler Osvaldo Aldrete-Davila. Instead, this employee has been highly praised by U.S. Attorney Johnny Sutton for his role in securing the convictions of Border Patrol Agents Ramos and Compean.

Less than two months after the incident involving Border Patrol Agents Ramos and Compean, an illegal alien smuggler attempted to run over Deputy Sheriff Guillermo “Gilmer” Hernandez in Rocksprings, Texas. Deputy Sheriff Hernandez fired his pistol at the rear tires of the Chevrolet Suburban in order to disable it and stop the assault. A fragment from one of the bullets struck Maricela Rodriguez-Garcia, an illegal alien hiding in the back of the vehicle, causing minor injuries. Three days later, Jorge Ernesto Espejel Montes, the Mexican Consul in Eagle Pass, Texas wrote a letter to Edwards County Sheriff Don Lettsinger, urging him to ensure that Deputy Sheriff Hernandez was prosecuted for the aforementioned actions. Two days after that, a similar letter was sent to the Federal Bureau of Investigation in Laredo, Texas. Copies of both letters were distributed to a number of officials in both countries. The relevant part of the first letter states:

⁸ U.S. Customs and Border Protection Table of Offenses and Penalties, Section I.6. (June 21, 2004).

Based on the Consular Convention between Mexico and the United States and the Vienna Convention on Consular Relations, the Consulate of Mexico is entitled to represent, protect and [sic] defend the rights of Mexican nationals in this country. Therefore, I would like to point out, that is the care [sic] of my Country that this [sic] kind of incidents against our nationals, do not remain unpunished. According with [sic] the information provided above, I would appreciate your kind assistance, so this Consulate can be informed of the current investigation, and your support, so you present and file a complaint with the necessities [sic] arraignments.

Although Deputy Sheriff Hernandez was cleared in an investigation conducted by the Texas Ranger Division of the Texas Department of Public Safety, U.S. Attorney Johnny Sutton decided to prosecute him, and managed to secure a conviction on charges that he violated the civil rights of the illegal alien. Deputy Sheriff Hernandez is currently serving a one-year prison sentence.

Several Border Patrol Agents in the El Paso Sector where Agents Ramos and Compean were assigned have reported that Chief Patrol Agent Luis Barker told agents at a pre-shift muster shortly after their arrest that the Mexican Consulate had written to the Secretary of State demanding a full investigation of the incident, and that they would be prosecuted to the fullest extent of the law.

In early January of this year, Border Patrol Agent Nicholas Corbett shot and killed an illegal alien who was assaulting him with a rock. All of the illegal aliens who witnessed the incident were taken to the Naco, Arizona Border Patrol Station to be interviewed by law enforcement authorities conducting an investigation of the incident. Before the investigation was concluded, however, several individuals from the Mexican Consulate arrived at the facility, and, according to two Border Patrol agents who were present, were afforded unfettered access to some of these witnesses before they were interviewed by U.S. law enforcement officers. This is very troubling, as it compromised the integrity of the investigation. Agent Corbett has been charged with murder by the Cochise County District Attorney, and is awaiting trial.

The influence of the Mexican government in the aforementioned cases is undeniable. Why the United States of America, a sovereign nation, would acquiesce to the unreasonable demands of another nation to prosecute some of its law enforcement officers for acting within the scope of their authority is a disturbing mystery. It must be solved, however, in order to restore the faith of the American public, as well as that of our law enforcement officers, in our system of justice.

Those who believe that there should be no intervention in these cases until after the appeals process has run its course should fully acquaint themselves with the facts of the case involving Border Patrol Agent David Sipe, who was convicted in March of 2001 of using excessive force while effectuating the arrest of an alien smuggler near Penitas, Texas. In response to pre-trial motions from Agent Sipe's defense counsel seeking the production of exculpatory and mitigating evidence, the U.S. Attorney's Office for the Southern District of Texas provided some of the requested evidence, and admitted that the three illegal aliens who were testifying against Agent Sipe were allowed to remain and work in the United States pending the trial, but emphatically stated that "no other promises or advantages" had been given. This was not even remotely close to the truth. In fact, these witnesses were "given Social Security cards, paid witness and travel fees, allowed to travel to and from Mexico to visit family, permitted to travel to North Carolina to work, and allowed to use government phones to contact relatives in Mexico." Moreover, it was discovered that the U.S. Attorney's Office failed to disclose the fact that prior to the trial, the smuggler had been caught by the Border Patrol in the company of other illegal aliens and was released when he displayed a card given to him by prosecutors.⁹ Armed with this newly-obtained evidence, Agent Sipe moved for, and was granted, a new trial. The U.S. Attorney's Office appealed that ruling to the Fifth Circuit Court of Appeals, which upheld the lower court's ruling. At the new trial, Agent Sipe was exonerated. Despite this blatant prosecutorial misconduct, it does not appear that any action was ever taken against any of those who were responsible for this travesty.

⁹ U.S. v. David Sipe, No. 03-40657, 5th Circuit Court of Appeals, (11-19-2004), pages 8 and 9.

At the time of Agent Sipe's conviction, his employment from the Border Patrol was terminated under the provisions of a newly-enacted law that required such action for any law enforcement officer convicted of a felony. The law also provided, however, that if the conviction was subsequently overturned on appeal, the removal had to be set aside retroactively to the date on which it occurred, with full back pay. Agent Sipe petitioned for reinstatement on those grounds in February of this year, and the Bureau of Customs and Border Protection refused to restore his employment for spurious procedural reasons. He appealed to the Merit Systems Protection Board, and an Administrative Law Judge ordered the Agency to reinstate him with full back pay. The agency is now appealing that decision, and refuses to allow Agent Sipe to return to work.

Everyone who is involved in any aspect of our system of justice has an obligation to ensure that it is administered fairly and equitably. If that does not happen, public trust in the entire institution suffers. The recent case involving Durham County, North Carolina District Attorney Michael Nifong wrongfully prosecuting three Duke University lacrosse players illustrates this point very well, and also demonstrates how the system of checks and balances is supposed to weed out overzealous prosecutors who overstep their boundaries. In the case of U.S. Attorney Johnny Sutton, however, not so much as an inquiry has been initiated, despite the swirling controversy.

This case raises troubling questions about the judgement and motives of the U.S. Attorney for the Western District of Texas. It undermines the public's confidence in our system of justice, causing jurors and observers to wonder whether prosecutors are withholding key evidence and/or have a hidden agenda. Equally damaging, it destroys the trust of those who are charged with enforcing our laws, and could quite possibly cause some of them to hesitate at a crucial moment, jeopardizing their lives and/or the safety of the public. This untenable situation needs to be resolved immediately. Border Patrol Agents Ramos and Compean have now been incarcerated for six and a half months for crimes that they did not commit. Shortly after arriving in prison, Agent Ramos was viciously attacked by five inmates,

sustaining multiple contusions and lacerations, as well as two herniated discs. Both agents now languish in solitary confinement to protect them against further attacks.

While ideally the executive branch of government should resolve this matter, it is quite obvious that it is unwilling to do so. Since the intervention of the judicial branch could be perceived as a conflict of interest, it falls upon the legislative branch to take action. A full and impartial investigation needs to be conducted by an independent counsel with subpoena and prosecutorial jurisdiction over this and all related matters. Further inaction will only serve to exacerbate the crisis of confidence that now besets our Nation's system of justice.